IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 16TH OCTOBER 2006 / 24TH ASWINA 1928

WP(C).No. 26956 of 2006(H)

PETITIONER:

C.BINDU, LEGAL ASSISTANT GRADE II,
LAW DEPARTMENT, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

BY ADV. SRI.N.SUGATHAN
SMT.VARSHA BHASKAR

RESPONDENT:

THE STATE OF KERALA,
REP. BY THE LAW SECRETARY,
LAW DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

BY GOVT. PLEADER SHRI.BIJOY CHANDRAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

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WP(C).No.26956 of 2006-H.
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Dated this the 16th day of October, 2006.

J U D G M E N T

The petitioner commenced service as Legal Assistant Grade II in the Law Department with effect from 22-1-2004. She is entitled to count her seniority from 23-12-2003 which is the date of effective advice by Public Service Commission for the above appointment. A period of probation for two years within a continuous period of three years is prescribed by the relevant rules. Before completing the period of probation, she availed leave without allowances with effect from 15-5-2005 for joining her spouse. She was allowed to join duty with effect from 15-3-2006 and has been continuing in service. While so, the respondent temporarily filled up vacancies in the post of Legal Assistant Grade I under Rule 31(a)(i) of K.S. & S.S.R. The petitioner is not among those who are thus promoted. It is her grievance that her juniors have been promoted in preference to her.

2. According to the information gathered by the petitioner, pursuant to Ext.P8 representation filed by her

the respondent has taken a decision that by availing leave without allowances, she had forfeited all service benefits accrued prior to the date of proceeding on leave and that she will not be allowed to reckon seniority from the date of her advice for appointment to the post of Legal Assistant Gr.II. The respondents are of the view that the petitioner can avail service benefits including seniority only from the date of her rejoining duty after the expiry of the leave period.

3. The above stand of the respondents is on the basis of Clause 5 of Appendix XII-C of Kerala Service Rules, which reads as follows:

> "In the case of non-permanent officers in regular service who have not completed probation in their entry cadre, leave under these rules may be granted subject to the condition that they shall have to start afresh and complete their probation on rejoining duty. The service benefits that had accrued to them before proceeding on leave shall be forfeited and on rejoining duty they shall be deemed as new entrants in the Government service."

Counsel for the petitioner submits that the right to count seniority from the date of her first effective advice is a right guaranteed by Rule 27(c) of the K.S. & S.S.R. and the same cannot be taken away by provisions in the nature of Clause 5 of Appendix XII-C. It is also contended that the

condition regarding commencement of service as a new entrant in service may have its impact on benefits like pay, increments, leave etc. but it cannot affect the seniority which is governed by a specific provision like Rule 27(c) in Part II of the K.S. & S.S.R. According to the counsel for the petitioner, Rule 27(c) postulates only one situation ie., reduction in rank and therefore, under no other circumstances, the seniority already accrued will be lost. To strengthen the above contention, judgments of this Court vide Exts.P10 and P11 as also a reported decision in ***State of Kerala v. Thomas Oommen*** (2003(1) KLT 7) are cited.

4. I am unable to accept the above contentions. I have considered identical contentions raised by the petitioners in WP(C).No.17598 of 2006 disposed of on 6-7-2006 and WP(C).No.18777/2006 disposed of on 18-8-2006. Following the ratio of the aforesaid decisions, this writ petition is liable to be dismissed. Exts.P10 and P11 judgments and the decision reported in 2003(1) KLT 7 are clearly distinguishable on facts. The above judgments were rendered on a consideration of the executive orders which held the field before incorporating Clauses 4 and 5 in Appendix XII-A as also Appendix XII-C of Kerala Service

Rules. The ratio of the decision dealing with Clause 4 of Appendix XII-C does not fit in with a fact situation involving Clause 5 of Appendix XII-A or XII-C of K.S.R.

The writ petition fails and the same is hereby dismissed.

K.K.DENESAN, JUDGE.

kvs/-